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## THE FRENCH BAR

The French Bar is an institution of great antiquity, and of perennial youth. Its roots run deep into the past, and its influence from the beginning, and up to this day, has been great upon legislation, upon jurisprudence, upon public opinion, and national policy.

The germ of the French Bar may be traced back to the time when there were saints among the kings, when the clerics no longer sufficed to carry gratuitously the burden of sustaining the demands of litigants, and when Saint Louis reigned in France, in the latter part of the XIIIth century.

A decree of Philip the Bold in 1274 and a later one in 1291, subjected advocates to a common discipline, and even at that early date, required them to take an oath, that they would plead none but just causes; would never demand an honorarium exceeding 30 livres; would never use opprobrious language, nor entail vexatious delays.

In 1327, under Philippe de Valois, letters patent were issued regulating the Bar of the Chatelet, which was the criminal jurisdiction of the Paris District; and a few years later a roll of advocates, or as we may more conveniently call them, barristers, was prescribed, upon which every barrister who took his oath was to be duly inscribed. It was about this period, that the separation of *avocats* and *avoués*—barristers and solicitors—was recognized in an ordinance prohibiting the exercise of both functions by one person; and by the same ordinance “prevarication” on the part of counsel was a cause for exclusion from the bar and from all royal offices.

Notwithstanding this separation of functions between barrister and solicitor, shortly after this ordinance, there was organ-

ized a joint and more formal association than had theretofore existed, known as the Confraternity of St. Nicholas, which, as we might judge from its name, was largely of a religious character, evidenced by the attendance of the body at various acts of public worship and at mass; and other confraternities of Saint Yves, long known as the patron of advocates and whose kindly epitaph declared him to have been a lawyer but not a thief—"Advocat sed non latro."

About half a century later the Confraternity of St. Nicholas expanded into what was known as the Community of Solicitors and Barristers, a more purely professional association which endured until the end of the XVth century, during which time the barristers had gradually withdrawn from attendance at the meetings of the Community and limited their attention to the formal administration of the Confraternity, until at last, recognizing the variation in their respective interests and the peculiar privileges and considerations accorded to the barristers, these finally formed the association, which from that time to the present day has been known as the "Ordre des Avocats" or Order of Barristers.

The solicitors, formerly known as procureurs, and since the Revolution as *avoués*, were the outgrowth of the insufficiency and the abuses of the old system which required all litigants to appear in person and not by a representative. It was hoped that this requirement would lead to settlements by the way, as recommended in the Gospel, and also insure prompt and ready solutions by getting at the real facts, unhampered by outside intermeddling or influence. This hope was not realized, great delays ensued, and blundering presentations often hindered understanding. The first real relief from this condition was the privilege given to the litigant to have the assistance of a counsel to steer him clear of the exaggerated technicalities of the old feudal procedure. If he could find none, the litigant had the right to have the court assign him one, provided he made the request at the outset of the proceedings—as the tramway passenger is now compelled to ask for his transfer on paying his fare—or forfeit the privilege. The court frequently appointed one of its own members, who, after assisting the litigant in presenting his case, resumed his seat upon the bench, to take part with his brethren in the decision. This dual office may seem strange, but recent tradition gives us an instance of it in the person of David Davis, of judicial and senatorial fame. A case was called before

him and defendant's attorney did not put in an appearance. "What will you do with the case—your opponent is not present?" said the judge—and when with an illiberality uncommon with our brethren of the federal bar, the counsel intimated that he must go on with it even in the unexplained absence of his confrere, the judge said to him: "All right; but we had such a case last term and we beat the plaintiff."

The School of Historians who believe that all changes in history, gradual or momentous, find their explanation in some economic cause, will be glad to see an example of it in the change whereby the procureurs came to be recognized. Under Saint Louis the right of appearing in court by another was granted to the sick and infirm. Sickness and infirmities so multiplied and the privilege was so often solicited that the succeeding sovereigns saw in the circumstance an opportunity for revenue and permits were granted renewable every year at a cost of six pence which rolled up into large sums.

Francis I. was apparently more a spendthrift than an economist, and expanded this lucrative privilege into a free right, with the consequence that procureurs multiplied, and thrived upon the intricacies of the pleadings and exceptions which the complicated procedure of the time encouraged, to such an extent that under Charles IX an effort was made to regulate the profession of solicitor and limit its membership, which finally became effective under Louis XIII, when the office of procureur was definitely established by an ordinance of 1620, limited in number, vacancies by death or surrender of office, being filled by new appointments; by custom these were given to the nominees of the retiring incumbents to whom the good will passed by inheritance or was sold for a consideration. The function of the procureur was to draw the pleadings and all other documents of procedure, and generally to supervise the preparation of cases. The Revolutionary Government by the law of March 20, 1791, abolished the office of procureur, instituted the office of *Avoué* in its place, without the purchaseable and inheritable element. It allowed former procureurs to exercise the functions of the *avoué*, permitting litigants however to present their own cases or to be represented by any persons of their own choice outside of the ranks of *avoués*. Finally, by the law of November, 1794 (3 Brumaire) the intermediary of the *avoué* was entirely dispensed with, and rules of procedure thus virtually abolished.

The chaos thus produced continued until March 27, 1800 when the functions of the *avoués* were restored, but not the property rights in the office. These were only recognized by the law of the 28th April 1816, which provided for the appointment of successors nominated by the incumbents, thus furnishing the opportunity of selling or transferring the office, notwithstanding the privilege reserved to the authorities to reject the candidate proposed.

The office since that time has become a most honorable and responsible adjunct to the administration of justice; the candidate must be 25 years of age, a *licencié* in law, or holder of a certificate of competency from a law faculty, of good character, certified to by the Chamber of Discipline of the *Avoués*, and the Mayor of his Commune, and have the approval of the court or tribunal to which he is accredited. Mr. Bodington writing in 1904 tells us that in Paris there were 51 *avoués* accredited to the appellate court and 150 for the courts of first instance. We shall have no more to say of those *avoués* or solicitors.

When we refer to the French Bar it is to the Order of Barristers, leaving aside the *avoués* or solicitors whose functions are quite distinct. The head of the Order of Barristers elected by the entire body, was designated as the *Bâtonnier*, it being one of his functions in all public processions, or ceremonies, to bear the baton or banner of the order. That organization remains to-day in the main as it was then, through the varying phases of growing influence, of alternate governmental repression or recognition. The growth of the order later required its subdivision into ten sections or columns; two members from each column forming what is known as the Council of Discipline.

In earlier times before the definite constitution of the order and its council, the discipline of lawyers was under the supervision of the Parlement or Court of Parliament as the Royal High Court was at that time designated. In addition to the text of the various royal ordinances this court established regulations, prescribing the course of study, length of probation, the costume; providing penalties for infraction of professional duty, enforcing punctual attendance and regulating recesses; these penalties extending to censure, to fines, suspension, expulsion, and at times, even to imprisonment.

As early as 1662 this jurisdiction over barristers passed from the Court of Parliament to the Order of Barristers itself, with the

exception that the disbarment of a member required the sanction of the court.

The very term chosen to designate the association, to wit "an order" was meant to indicate that it was not a corporation or a body politic, but merely a group of men of the same profession, having like aims and aspirations, and holding together by the strongest and most flexible bonds—unity of purpose.

"If there exists among us," said the great Chancellor d'Aguesseau, in the seventeenth century, "some sort of discipline for the honor and reputation of the Order, it is the result of voluntary agreement, rather than the work of any public authority."

The several Orders of Barristers throughout France correspond to the appellate departments into which the country is divided, of which there are twenty-six, so that the jurisdiction of each appellate court comprises a local bar under control of the Order of Advocates, and governed by its Council of Discipline, which an English barrister, Mr. Underdown, tells us may be compared with the "Disciplinary Powers of the Circuit Mess," the Benchers from the Inns of Court having authority in matters of discipline over the members of their societies, much in the same way as the councils and their *bâtonnier* have in France.

Prior to the Revolution the Order of Barristers claimed and exercised complete control over its membership, and were the sole judges of the fitness of the applicant for admission, and even for retention, with the exception, as we have seen, of an appeal to the High Court of Parliament in cases of expulsion; this right, in practice, rarely if ever, disturbed the judgment of the Council of Discipline, which was almost universally held to be the best judge of the fitness of the barrister to continue the high function of his profession. Admission to the bar, or more strictly the right of inscription upon the roll, is guarded with jealous care. The applicant must first have received his degree as *licencié* in law after three years study in a recognized University. His degree is filed with the Solicitor General, the hierarchical head of all State Attorneys; upon notice to the *bâtonnier* of the order the applicant is presented to the court to take his oath of office. In this oath the postulant promises "that he will never say or publish as counsel or advocate anything contrary to the laws or regulations, to good conduct, to public peace, or the safety of the State; that he will never be wanting in the respect due to the courts, and to the public authorities." The oath hav-

ing been taken, the postulant applies to the order to admit him to probation, or in other words to what is known as the first stage of his profession; the application is referred by the *bâtonnier* to the council of the order, and a member of the council is designated to report upon the candidate. This reporter then enters into personal relations with the applicant and becomes his sponsor to the order; the candidate calls upon him, presents his papers, answers all his questions, and furnishes him full explanation in regard to his career and to his condition; this formal visit is courteously returned by the reporter and the personal relations thus established endure throughout the length of the probation which covers another three years.

The most unquestioned probity is an essential to the acceptance of the candidate, and as a corollary, his complete independence is a requisite, as a guarantee that nothing can interfere with the applicant's exercise of his profession in the sole interest of justice. This independence means, in the first place, an individual domicile, over which the applicant has full control, where those in need of his assistance may call at any time without hindrance from others. This domicile may be in the parental home, but if so it must be of such a character that parental authority cannot interfere with the applicant's freedom to receive his clients whenever they choose to call.

For a like reason, the applicant must not be engaged in any other occupation, which could in any way interfere with the performance of his professional duties, so that trade, commerce, industrial occupations, or any other avocations which may in any way detract from his complete devotion to the interests of his clients, have been declared incompatible with the profession of the law; a lawyer may not therefore be a salaried employee and keep his place at the bar, and this applies equally to employment in public office, with the sole exception I believe of the Minister of Justice. A public office which absorbs the attention of the lawyer and creates relations which may come in conflict with his first duty to his client and to the administration of justice, suspends him temporarily from the Roll of Barristers, to which he may be reinstated upon regaining his freedom to give his time wholly to the profession. The papers have lately reported the unusual circumstance of the distinguished advocate and statesman recently elected to the Presidency of the French Republic, making a special request that during his incumbency of that

office—accepted in the general public interest, and for the good of the State—he should be privileged to have his name retained upon the Roll of Barristers as a member of the order to which he is devotedly attached. This exceptional petition, it is to be reported, was not only acceded to, but confirmed in the traditional form of a banquet where President Poincaré's continued devotion to the best interests of the bar was warmly acclaimed.

When the candidate has passed through his three years of probation, and has satisfied the Council of the Order as to his good conduct during that term, made proof of punctual attendance upon the courts, and upon the conferences of the order, of the fact that he is engaged in no other occupation incompatible with his devotion to his profession and his independence in its exercise, it is for the council to determine whether he has satisfied the requisites of assiduity, ability, dignity, morality, and independence sufficiently to permit his inscription upon the Roll of Advocates; if so, he is admitted, his name inscribed upon the roll and he is a full-fledged member of the Order of Advocates.

The conferences of the order, to which allusion has been made, are regular meetings at which questions of law are proposed and discussed by the probationers and by members of the order. The probationers are likewise called upon to attend meetings of the columns or committees into which the order is subdivided; these are presided over by one of the members of the council, and the probationers are there taught all the usages and regulations of the profession, the ethics and the etiquette which control the actions of the advocate. Lack of attendance or of proper attention at these meetings and conferences is a ground for the prolongation of the probation, in the discretion of the council.

In the meantime, although the probationer is not inscribed upon the Roll of Advocates, he is none the less a lawyer, having taken the oath required of lawyers before the court, and he may, in the interim, practice his profession, and use the title of advocate, although the right and title are provisional and subject to revocation or confirmation at the end of the probationary term. The probationers may try cases and give opinions, and they are indeed frequently selected to carry out the benevolent mission which the Order of Advocates imposes upon itself of trying cases for the indigent, under the system known as "Judicial Assistance." This professional assistance to the indigent is—by the way—one of the obligations which the Order of Advocates



imposes upon its members; if a would-client is not in a condition to undertake the expenses of litigation, he is recommended to the council so that judicial assistance may be provided for him; the matter is brought to the attention of the *bâtonnier*, who designates counsel to assist him, and this designation cannot be declined, unless upon explanation acceptable to the *bâtonnier* he chooses to relieve the nominee and make a different appointment.

The standards and traditions of the order are of the highest and most exacting character. The distinguished lawyer Camus in his "Letters on the Profession," written in 1772, said of it then what is still believed of it in France to-day:

"The exercise of the profession of the law should lead to honor, not to fortune. The first element which wins for a lawyer the esteem of sensible people is that he has set aside lucrative occupations, for the most part less painful and less laborious, to devote himself to one which promises little but honor to its most successful members."

And the same writer sums up the character of the lawyer, as understood in France, in this language:

"To devote oneself and all one's faculties to the good of others; to give oneself up to long study in order to resolve the doubts which many of our laws engender; to become an orator, the better to assure the triumph of upright innocence; to consider the privilege of holding out a helping hand to the poor as a reward preferable to the most expressive gratitude from the rich and great; to defend the wealthy from interest and the indigent from duty. These are the traits which should characterize the lawyer."

That this is still the standard of to-day, however it may at times, have wavered, may be truly said, and in one of the annual addresses delivered by the *bâtonnier* to the entire order, including the probationers, upon the reassembling of the courts, M. Rousse lamented the love of luxury, the thirst for money which more modern methods were instilling into the public, and from which the traditions of the bar had much to fear.

"Equivocal customs, suspicious familiarity, harsh demeanor and sharp exactions hitherto unknown to us have too often taken the place of that good faith of olden times, the proud scorn of money, unfailing self-respect, all those noble chimeras that uplift and ennoble life; which are not perhaps requirements of duty, but are, indeed, the luxury of high souls, and which are known in a word by the name of honor.

"These faults and weaknesses are not those of the bar alone, they are the faults and weaknesses of our time. The passion for

wealth and for high places, political intemperance, love of popularity, exaggerated self-esteem; these are what we see everywhere about us, and which work to our discomfiture. If some few among ourselves have seemed to be more wrapped up in the rapid growth of their wealth than in the preservation of their dignity, it is because they have been swept on by this almost irresistible current of false doctrine and bad morals which threaten to carry the bar as well as the country to evil."

The standards of the profession, over which the Order of Advocates stands on guard, requires in the first place that a lawyer should never advertise. Even signs have been held improper, and his letterheads should bear no other indication than his address. Any effort to gain publicity through newspaper reports is strongly reprehended, and even the greatest reserve in yielding to solicitations of reporters is strictly enjoined. The acceptance of recommendations, for instance to prison wardens, or to other like officials has been made the subject of censure.

The only recommendation which a lawyer should have is his labor, his knowledge, the care and devotion which he gives to the matters entrusted to him; his dignity, his self-respect and independence forbid any seeking after clientage, either by outward indications calling attention to himself and his office, or by solicitation, direct or indirect, or even by "obsequious complaisances." These are not, at the French Bar merely platonic counsels; any infraction of the least of these will bring upon the offender the reprimand or censure of the entire body.

This same standard of conduct requires that the barrister shall represent his clients solely in court or at his office, and it is never permissible for him to go to his client's office or residence unless by reason of illness or other insurmountable obstacle a client is incapacitated from advising with the lawyer at his own office. The censure of the order was visited upon one of their members who accepted a rendezvous with his client at a café, as a lowering of professional dignity.

Complete confidence is the key-note of the order. As a consequence, full and complete communication of all documents bearing upon the case is made from one lawyer to another; no receipt is taken for the papers thus handed over and after full inspection they are returned in the same condition in which they were received. As a consequence questions in litigation can be presented entirely on their merits, there being no concealment of any facts. It is the administration of justice to which the

profession is pledged. Camus to whom I have already alluded, at the close of the 18th century made this statement with reference to the practice:

"As the lawyers are solely concerned with the establishment of truth and justice, there has been established among them an unvarying custom not to argue their cases without having previously communicated each to the other all the documents upon which their respective cases rest. In this way the counsel of the litigant against whom certain documents are to be produced has full leisure to examine them. This usage which has already endured for several centuries and which Pasquier, who wrote a century since, declared, had never resulted in any wrong, should be sufficient to attest the feeling of honor which is the very soul of the profession, the pledge, as said by one of our elders,—of sublime incorruptibility."

Original instruments of the greatest value are handed over without formality of any kind. There is no question of a receipt or of an inventory of papers confided, because they are always returned precisely as they are given and immediately upon request.

As early as 1698 D'Aguesseau in one of the annual addresses which the Chancellor addressed to Parliament and the bar, said to the young lawyers

"Never take pride in the false glory of having obscured the truth; more sensitive to the interests of justice than to the longing for idle reputation, seek to make manifest the excellence of your cause rather than the brilliancy of your attainment."

It is "in the interest of justice" to which D'Aguesseau refers, that this requirement of full communication of all papers bearing upon the case is insisted upon, and any refusal to comply with this requirement or any concealment of any papers from an opponent—the use of papers which have not been communicated—all these involve the severest censure.

The utmost care is taken that no paper shall be lost or mutilated, and it is related that some time since, when a paper was returned with a blot which made it difficult to decipher an important word, the instance was so reprobated that the counsel to whose custody the papers had been entrusted lost his standing among the community of lawyers, although the matter was not referred to the Council of Discipline, as there was a denial of any intentional mutilation.

This severity of discipline does not detract from the really fraternal character of the order; on the contrary it is rather an indication of the strict regard that prevails for the rights of each. Throughout all dealings, respect for the elders and leniency for the younger, and assistance to those in need of it can always be counted upon. All differences or controversies among the members are submitted without hesitation or cavil either to the *bâtonnier* or to the council; nor is there any hesitation in the acceptance of the decision as authoritative. In like manner the order will heed the request of any member to investigate any complaint they may make against the judges or other judicial officials, of which I shall cite one or two examples later on.

While the private life of a lawyer is protected against intrusion and investigation, if any reprehensible conduct becomes public, so as to cause scandal and bring reproach upon the profession, the order will take cognizance of the fact and the culprit cannot escape discipline by any fine distinctions between what touches the honor of the individual or the honor of the lawyer.

On the question of the lawyers' fee Mr. Choate has told us in an address before the State Bar Association that in England "The rigid rules of the profession by which the barrister is bound, absolutely forbid him to take a contingent interest or share in any controversy in which he acts professionally and the slightest violation of this rule would compel his disbarment."

As early as the year 1345 by a Royal Ordinance, any agreement by counsel for compensation by an interest in the result of the litigation was forbidden, as well as the purchase of a cause of action, and this was confirmed by an ordinance two centuries later—1560. To this day it remains the inflexible rule of the French Bar. Traditions have preserved it with the greatest strictness, and any such arrangement is held to be incompatible with the dignity and with the independence of the lawyer—an independence essential to the proper exercise of his profession. By a still earlier ordinance, in the year 1263, it was enacted that lawyers could agree with the clients for their honorarium provided it did not exceed 30 livres, which still represents in actual count Fcs. 30, though in the real value considerably more. Although this limitation was repeated by a regulation of the Court of Parliament, two centuries later, it is fair to say that in practice this limit was not adhered to, and the courts exercised control over the honorarium, reducing the charge if it appeared

exorbitant, and taking into account the importance and the duration of the litigation as well as the local customs and the standing of the lawyer.

The traditions of the bar forbid the bringing of a suit to recover fees; the honorarium is still treated as a voluntary offering, and if not freely paid by the client, no proceeding must be undertaken to enforce the collection, nor must the payment be insisted upon by letter or personal pressure. Nor must payment in advance be exacted in order to escape the possibility of an ungrateful client. If payment in advance is made it must be freely made. Although a lawyer may return the papers and decline further service, this must be done in such a manner as to afford the client ample opportunity to retain other counsel, and the retention of papers as a means to enforce payment would entail the ostracism of the lawyer guilty of it.

An English "Manual of Chancery Practice" ridicules this attitude of the French Bar and its endeavor to assimilate the lawyer of to-day to the Roman Advocate who was the patron of his client—whereas the patricians of Rome have no successors and in all times the laborer has been worthy of his hire. To this, Dupin, the great French Advocate and Jurist, replies that unquestionably a lawyer is entitled to compensation for his labor, and he may claim satisfaction of it in the courts, but that the tradition—or prejudice if you will—as the English writer calls it, which, even in this day, would, in France, condemn to disbarment a lawyer suing for a fee—has had a wholesome influence upon the independence and the strength of the French Bar.

Being an honorarium or voluntary offer, the logical French mind has always declined to give any receipt for it; a receipt, they argue, is evidence of the discharge of an obligation, and there being no obligation, there should be no receipt. As early as 1579 there were found ill-disposed persons who questioned the good intent of the lawyers' actions, and complaints were made that lawyers declined to give receipts because they were unwilling to disclose the amount of their compensation, so that in that year the Court of Parlement, then sitting at Blois, made an ordinance requiring lawyers to certify in writing to the amounts they had received, under penalty of being found guilty of extortion. The bar, then as now, solidary and united, ignored the ordinance, and for over twenty years it remained innocuous, but in 1602, a decree of Parliament was issued requir-

ing its enforcement. The entire bar of that circumscription numbering 307 lawyers, registered their protest, and rather than comply with the order had their names taken from the rolls. This is the earliest record of a professional strike that I have come across: And it was effective; the course of justice was impeded—paralyzed—and Henry IV was appealed to; with his proverbial skill in accommodation he confirmed the decree, but restored the lawyers to the roll without further comment, and without exacting compliance, so that the administration of justice proceeded, the lawyers held their own, and everybody was satisfied; the question remained undecided, but apparently settled. This method of proceeding recalls a case in which a somnolent judge seemed to be listening to strenuous arguments pro and con upon the admissibility of what both lawyers considered an important piece of evidence; when their voices ceased, the judge awoke and his only comment was, "Gentlemen, you are losing time, go on with your case."

The rapidly spreading practice of yearly employment of counsel, so largely due to the increase of corporate bodies, is of not such recent origin as one might suppose. As early as the XVIth century, not only the king, but towns and municipalities as well as the nobility, and even wealthy merchants, adopted the practice of yearly retainers, even to several barristers. Indeed, that other practice which we have seen adopted upon occasion, of retaining all the distinguished lawyers within reach, leaving the opponent barren of recognized talent for his defense, became so mischievous that an ordinance of Francis I in 1536 declared it a species of embracery and required the court, upon such a state of facts being established, to assign to the complaining party not less than two efficient counsel. Nearly two centuries earlier, in 1369, the common justice of such relief against this peculiar form of monopoly had been recognized in a case between the Religious of St. Denis and Simon Lafontaine, himself a distinguished lawyer; Lafontaine had applied to one Jean Pastourel to take his case, who had declined on the plea that he was a vassal of the Religious and could not plead against them; on this refusal Lafontaine prayed the court to assign Pastourel to his defense on the ground that his opponents had retained one Romain, the only rival of Pastourel as an expert on the feudal questions which were involved, and if his opponents retained Romain and silenced Pastourel there would

be gross inequality between the litigants, to the detriment of justice. He prevailed.

A word as to the lawyers' rights and privileges.

It is significant that even our ultra-democratic scorn of the formalities has gradually given away to the extent of robing our judges, apparently recognizing the fact that decorum is a desirable element in judicial as well as in social proceedings—although we still deny to our diplomatic representatives abroad the insignia of office which we proudly accord to army and navy.

In France, as in England, though not quite so ostentatiously, costume is brought to the aid of the bar, and the advocate—classed as an integral part of the administration of justice, is invested with the uniform of his profession, reduced to the simplicity of cap and gown and white cravat. This uniform accoutrement is an outward indication of the solidarity of the bar; the older and distinguished members, alike with the younger and inexperienced, stand in similar array, entitled to and receiving the equal regard due to the profession which they represent.

Advocates plead wearing their caps.

This privilege of standing covered before the courts is a symbol of equality and independence which has its value; it evidences the freedom of speech which should be allowed to counsel—as it was the privilege of the Spanish Grandee not to uncover in the presence of the king; only from those who stand on equality may the whole truth be expected. When Marshal Ney was brought to trial before the House of Peers on a charge of high treason for going over to the Napoleonic standard on the return from Elba, he was defended by the great Dupin, who was forced to uncover before this High Court, which claimed the right to ignore this requisite of ordinary judicial proceedings, and according to Dupin, he was forced not only to uncover, by the removal of his barrister's cap, but by a corresponding hindrance to the freedom of his defense. This may explain his denunciation of the growing custom of judicial impatience.

"If the profession of the law has its honors," he said, "it has also its annoyances, and among these, the most trying, against which lawyers in all times have most complained, and which on occasion has excited their resentment and animosity, is to be needlessly interrupted, and hectored without cause, during the progress of an argument. Such interruptions are the more to be regretted that they are apt to bring on altercations between court and counsel in which self-love plays so great a part that it is difficult for

counsel to hold an even balance and avoid excess, while the court may well become at once judge and avenger."

The privilege of the costume is reserved exclusively for those whose names are on the Roll of the Bar. The question was raised in the case of the distinguished Dominican preacher Lacordaire who before becoming an ecclesiastic had been a barrister. In 1831 prosecutions were brought against him, Montalembert, Lamennais and others for the offence of maintaining a school in contravention of the Napoleonic Law of 1806, which provided that an imperial University should be established and should have exclusive control of "all public teaching and education throughout the Empire." Montalembert's father had died and he had thus become a peer, so that the prosecution was conducted before the House of Peers. Lacordaire applied for readmission to the bar, and his application was denied on the ground that the clerical office was incompatible with the profession, so that he was forced to plead his own case in *propria persona* as a layman, without the cap and robes of the barrister.

The barristers freedom of speech is subject only as we have seen to the obligation that nothing must be said or done in contravention of the law or contrary to good morals, nor against the safety of the State or the public peace. Lord Brougham's passionate view of the lawyer's privilege is not shared in France. There the lawyer remains a citizen and is not relieved of his primal duty as a citizen because he is invested with the privilege of representing his fellow-citizens in the enforcement of their legal rights. The eminent *bâtonnier*, M. Rousse, whom we have already cited, expressed in saying to the assembled postulants for admission to the roll: "It is well for you to be reminded that in order to become good lawyers you must first be good men and good citizens."

Criticisms upon the procedure or upon the decisions of courts are unhindered, provided they be criticisms, and not personal or offensive animadversions addressed to a judge, or the public approval of crimes, or actions which the courts have declared punishable. The discussion of public acts does not authorize attacks upon public officials, nor are personalities between counsel tolerated.

The lawyer is not considered simply as the mouthpiece of his client; before becoming his representative it is his privilege to be his judge, and it is made a matter of conscience for him



to examine as carefully as he would a matter of personal interest, the case submitted to him, and it is his right to decline aid in what he considers a wrongful case—though this privilege of refusing a case must be exercised with fairness toward the client, who must not be left in a position where it is difficult for him to find other counsel.

It is the lawyer's right to control the presentation of the case; in this respect he is not to take the guidance of his client, but, on the contrary, he is to give his guidance to the client.

Under no circumstances may a lawyer make any advances for the expenses of a suit or undertake to make payments on behalf of the client either to the solicitor or to court officials. If the client is indigent he is, as we have already stated, to be recommended to the council which will procure him the judicial assistance required and the *bâtonnier* will, if need be, make an official designation of counsel to defend him.

In criminal trials, if facts developed make it impossible for the lawyer to plead his client's innocence he must not for that reason abandon the defense but confine it to insistence upon all the requirements of law and of procedure. The "Judicial Assistance" which I have mentioned is real and not nominal, and is extended to poor suitors in civil matters as well as to defendants in criminal prosecutions, and thousands of cases, both in Courts of First Instance and in Appellate Courts are aided by this method.

The privilege of professional confidence is strictly enforced, and the secrets confided by a client, even he is not privileged to have the lawyer reveal. The relation of confidence between lawyer and client is considered a matter of public policy, of which no invasion is permitted, and the revelation of such confidences is moreover made punishable by the penal code. Lawyers' papers are exempt from search unless the advocate is, himself, involved in the accusation.

In all criminal proceedings and before Military Courts, the accused has the privilege of the final reply, thus recognizing the human frailty which always puts the onus upon the accused, notwithstanding the liberty-loving maxim that all men should be considered innocent until they are proved guilty.

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